

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 555

Introduced by Senator Kehoe

February 27, 2009

An act to add Section ~~5096.519~~ to the Public Resources Code, relating to ~~public lands~~; 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Kehoe. ~~Public lands: condemnation of Eminent Domain Law:~~ conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. *Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.* Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, conservation lands from being sold to another owner or having possession and control transferred to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized power may be exercised and permits that exercise only for a public use.

This bill would *revise the Eminent Domain Law to prohibit a governmental entity person from condemning acquiring a conservation easement acquired by a state agency or nonprofit land trust by eminent domain, unless specified procedures are followed. The bill would require the governmental entity person to give the holder of the easement notice*

and an opportunity to state any objections to the ~~condemnation proceedings. The bill would also require the governmental entity to prove by clear and convincing evidence that its proposed use satisfies statutory requirements that the condemnation be for compatible use and necessary for public use.~~

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1240.055 is added to the Code of Civil
2 Procedure, to read:
3 1240.055. (a) As used in this section, the following terms have
4 the following meanings:
5 (1) “Conservation easement” means a recorded conservation
6 easement as defined in Section 815.1 of the Civil Code.
7 (2) “Person” means any person authorized to acquire property
8 by eminent domain.
9 (3) “Property appropriated to public use,” as used in Article
10 6 (commencing with Section 1240.410) and Article 7 (commencing
11 with Section 1240.610), includes a conservation easement.
12 (b) A person authorized to acquire property for a particular
13 use by eminent domain shall not exercise the power of eminent
14 domain to acquire for public use property that is subject to a
15 conservation easement, except as provided in this section.
16 (c) When it appears that property subject to a conservation
17 easement may be required for a public use, the person seeking to
18 acquire the property shall, not less than 30 days prior to the date
19 it intends to initiate eminent domain proceedings, provide written
20 notice to the entity or organization that holds the conservation

1 *easement of its intention to initiate eminent domain proceedings*
2 *to acquire property that is subject to a conservation easement.*

3 *(1) The notice shall:*

4 *(A) Provide a general description, in text or by diagram, of the*
5 *property subject to a conservation easement that is proposed for*
6 *acquisition.*

7 *(B) Provide a description of the public use or improvement that*
8 *the person is considering for the property.*

9 *(C) Provide an opportunity for the holder of the conservation*
10 *easement to consult with the person seeking to acquire the property*
11 *prior to commencement of eminent domain proceedings.*

12 *(2) Within 30 days after receipt of notice from the person seeking*
13 *to acquire the property, the holder of the conservation easement*
14 *may state in writing its objections to the acquisition, including*
15 *identifying any potential conflict between the public use proposed*
16 *for the property and the particular characteristics of the*
17 *conservation easement.*

18 *(3) The person intending to acquire the property subject to a*
19 *conservation easement shall, within 30 days after receipt of*
20 *comments from the holder of the conservation easement, respond*
21 *in writing to the comments.*

22 *(d) If the conservation easement was purchased with state or*
23 *local public funds or if a public entity required the conservation*
24 *easement as a condition of project approval, the easement holder*
25 *upon receipt of the notice pursuant to paragraph (1) shall inform*
26 *the person intending to initiate eminent domain proceedings of*
27 *the name and address of any public entity that provided funds for*
28 *the purchase of the easement or required it as a condition of*
29 *approval. The easement holder shall provide to the public entity*
30 *that provided funds or required the easement the same notice*
31 *described in paragraph (1) of subdivision (c) and the public entity*
32 *shall have 30 days after receipt of notice from the easement holder*
33 *to state in writing its objections to the acquisition. This provision*
34 *shall not apply if there are no recorded documents that evidence,*
35 *and the easement holder has no record or independent knowledge*
36 *of, the identity of the public entity that provided funds to purchase*
37 *the conservation easement or that required the conservation*
38 *easement as a condition of approval.*

39 *(e) In any eminent domain proceeding to acquire property*
40 *subject to a conservation easement:*

1 (1) *The provisions of Section 815.2 of the Civil Code shall apply.*

2 (2) *The holder of the conservation easement shall be named as*
3 *a defendant, as set forth in Section 1250.220, may appear in the*
4 *proceedings as set forth in Section 1250.230, and shall have all*
5 *the same rights and obligations as any other defendant in the*
6 *eminent domain proceeding.*

7 (f) *No person shall initiate eminent domain proceedings against*
8 *property subject to a conservation easement unless the following*
9 *findings are made:*

10 (1) *The location is not based primarily on a consideration of*
11 *the lower cost of acquiring the property.*

12 (2) *There is no other land within the vicinity on which it is*
13 *reasonably feasible to locate the public improvement.*

14 (g) *The holder of a conservation easement is an owner of*
15 *property entitled to compensation if that property is taken, pursuant*
16 *to Section 1263.010. Compensation for the taking of all interests*
17 *in the property subject to a conservation easement shall be no less*
18 *than the compensation paid for the property if it were*
19 *unencumbered by that conservation easement.*

20 SEC. 2. *If the Commission on State Mandates determines that*
21 *this act contains costs mandated by the state, reimbursement to*
22 *local agencies and school districts for those costs shall be made*
23 *pursuant to Part 7 (commencing with Section 17500) of Division*
24 *4 of Title 2 of the Government Code.*

25 SECTION 1. ~~Section 5096.519 is added to the Public Resources~~
26 ~~Code, to read:~~

27 5096.519. ~~(a) A governmental entity shall not condemn a~~
28 ~~conservation easement acquired by a state agency or nonprofit~~
29 ~~land trust, except as provided in subdivision (c):~~

30 ~~(b) As used in this section, the following terms have the~~
31 ~~following meanings:~~

32 ~~(1) "Conservation easement" means a recorded conservation~~
33 ~~easement, as defined in Section 815.1 of the Civil Code, that was~~
34 ~~created to exist in perpetuity or will exist for at least 10 years and~~
35 ~~that is acquired with state or local funds or charitable or income~~
36 ~~tax resources, is held by a qualified entity, as defined in Section~~
37 ~~815.3 of the Civil Code, and is administered primarily for retaining~~
38 ~~land predominantly in its natural, scenic, historical, agricultural,~~
39 ~~forested, or open-space condition.~~

1 (2) “Public use,” as used in Article 6 (commencing with Section
2 1240.510) and Article 7 (commencing with Section 1240.610) of
3 Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure, means
4 privately owned lands managed for the protection of natural,
5 cultural, open-space, or recreational resources in public trust.

6 (e) ~~(1) Prior to the initiation by a governmental entity of~~
7 ~~condemnation proceedings against a property that is subject to a~~
8 ~~conservation easement, the governmental entity shall do all of the~~
9 ~~following:~~

10 (A) ~~Give notice to the holder of the easement.~~

11 (B) ~~Provide an opportunity for the holder of the easement to~~
12 ~~consult with the governmental entity.~~

13 (C) ~~Provide the holder of the easement the opportunity to state~~
14 ~~its objections to the condemnation.~~

15 (D) ~~Provide a response to the objections.~~

16 (2) ~~Article 6 (commencing with Section 1240.510) and Article~~
17 ~~7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of~~
18 ~~Part 3 of the Code of Civil Procedure shall apply to condemnation~~
19 ~~proceedings initiated by a governmental entity against a~~
20 ~~conservation easement. In those proceedings, the condemning~~
21 ~~governmental entity shall be required to prove by clear and~~
22 ~~convincing evidence that its proposed use satisfies the requirements~~
23 ~~of Article 6 (commencing with Section 1240.510) or Article 7~~
24 ~~(commencing with Section 1240.610) of Chapter 3 of Title 7 of~~
25 ~~Part 3 of the Code of Civil Procedure.~~

26 SEC. 2. ~~If the Commission on State Mandates determines that~~
27 ~~this act contains costs mandated by the state, reimbursement to~~
28 ~~local agencies and school districts for those costs shall be made~~
29 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
30 ~~4 of Title 2 of the Government Code.~~